

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TIME'S UP, INC.,

**REPLY DECLARATION**

Plaintiff,

07-CV-9557 (PAC)

-against-

THE CITY OF NEW YORK, COMMISSIONER OF THE  
CITY POLICE DEPARTMENT RAY KELLY, OFFICER  
CAROLYN FANALE, OFFICER STEVEN BOBBETT,  
OFFICER LUIS MORTIMER, DEPUTY INSPECTOR  
THOMAS GRAHAM, and APPROXIMATELY 34  
OTHER UNIDENTIFIED NEW YORK CITY POLICE  
OFFICERS,

Defendants.

----- x

ARTHUR G. LARKIN, for his declaration pursuant to 28 U.S.C. § 1746, states:

1. I am a Senior Counsel at the New York City Law Department and I am admitted to practice before the bar of this Court. I make this reply declaration in further support of defendant City of New York's motion to dismiss the complaint in its entirety, with prejudice, pursuant to Rules 4(m), 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. I am fully familiar with the matters set forth below.

2. Attached as Exhibit A is a series of e-mail transmissions between the undersigned and plaintiff's counsel, Wylie M. Stecklow, which were made on Oct. 25-26, 2007.

3. Attached as Exhibit B is a series of e-mail transmissions between the undersigned and plaintiff's counsel, which were made on Jan. 8-9, 2008.

4. Attached as Exhibit C is an e-mail transmission from the undersigned to plaintiff's counsel, made on Feb. 26, 2008. I did not receive a response to this message, so I called plaintiff's counsel on Feb. 28, 2008, to inquire about the status of service upon the

individual defendants. During that conversation, counsel advised that the individuals had been served on "Monday or Tuesday" of this week, i.e., Feb. 25, or 26, 2008.

5. Attached as Exhibit D are copies of the affidavits of service filed by plaintiff on or about Feb. 28, 2008 (*see DE 10*), which purportedly reflect service upon the individual defendants Fanale, Graham, Bobbett and Mortimer on Feb. 26, 2008.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York, on February 29, 2008.



ARTHUR G. LARKIN (AL 9059)

# **EXHIBIT A**

**Larkin, Arthur**

---

**From:** WylieLAW [wylie@wylielaw.com]  
**Sent:** Friday, October 26, 2007 1:40 PM  
**To:** Larkin, Arthur  
**Subject:** Re: Time'S UP Inc. v. City, et al., 07-CV-9557

As you represent these individuals and a communication (the letter requesting waiver of service) has been sent to them via your office, I believe that you are under an obligation to convey the communication to them.

Not trying to bust your chops here, but the letter I sent you came from the SDNY website, this is clearly a procedure the Court favors. As set out in an earlier email, this is also something that may save your clients additional anguish/professional embarrassment.

So I understand that there is a general rule in your office not to accept personal service on behalf of individual officers, but in this situation where you already represent these individual officers, there is a procedure the Court has proposed, and since the letter has been submitted to your office on behalf of these officers, this is no longer the standard situation, but one that may require a non-standard response.

Wylie

(212) 566 8000    www.wylieLaw.com    Lawyers for the Rest of Us  
fx 212 202 4952    10 Spring ~ N Y C 10012

\*\*\*\*\*  
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\*\*\*\*\*

On 10/26/07 1:27 PM, "Larkin, Arthur" <ALarkin@law.nyc.gov> wrote:

Wylie:

I am not aware of any such ethical obligation under the circumstances here. If you are aware of a Disciplinary Rule, Ethical Canon or court decision that would apply, please provide me with the citation.

Arthur G. Larkin, Esq.  
Senior Counsel  
New York City Law Dep't  
100 Church St., Room 3-193  
New York, New York 10007  
(212) 788-1599 (tel.)  
(212) 788-9776 (fax)

**From:** WylieLAW [mailto:wylie@wylielaw.com]  
**Sent:** Friday, October 26, 2007 1:24 PM  
**To:** Larkin, Arthur

**Subject:** Re: Time'S UP Inc. v. City, et al., 07-CV-9557

Arthur

Isn't it possible you are actually under an ethical obligation to take the letter I sent you and show it to the individual officers you represent?

Wylie

On 10/26/07 1:09 PM, "Larkin, Arthur" <ALarkin@law.nyc.gov> wrote:

Wylie:

We are not authorized to accept service for individual police officers. Thank you for your understanding.

Arthur G. Larkin, Esq.  
Senior Counsel  
New York City Law Dep't  
100 Church St., Room 3-193  
New York, New York 10007  
(212) 788-1599 (tel.)  
(212) 788-9776 (fax)

**From:** WylieLAW [mailto:[wylie@wylielaw.com](mailto:wylie@wylielaw.com)]  
**Sent:** Friday, October 26, 2007 11:03 AM  
**To:** Larkin, Arthur  
**Subject:** Re: Time'S UP Inc. v. City, et al., 07-CV-9557

Arthur

You represent these individuals.

You should ask them if they would like you to accept service, pursuant to the recommendation of the SDNY, or if they would prefer to get served at their place of business again.

This is not a standard situation with a fresh new case. Accepting service on their behalves is not only cost effective, time efficient, but also, it may be the best course of action for your clients. Please consider speaking with your clients before dismissing the request out of hand.

Wylie

(212) 566 8000      [www.wylieLaw.com](http://www.wylieLaw.com)      Lawyers for the Rest of Us  
fx 212 202 4952      10 Spring - N Y C 10012

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On 10/25/07 7:23 PM, "Larkin, Arthur" <ALarkin@law.nyc.gov> wrote:

Wylie:

Our office is not authorized to accept service on behalf of individual defendants.

Arthur G. Larkin  
Senior Counsel  
NYC Law Dept.  
100 Church St., Room 3-193  
New York, NY 10007  
(212) 788-1599

-----Original Message-----

**From:** WylieLAW [mailto:[wylie@wylielaw.com](mailto:wylie@wylielaw.com)]  
**Sent:** Thursday, October 25, 2007 5:25 PM  
**To:** Larkin, Arthur  
**Cc:** Marlon\_Ovalles@nysd.uscourts.gov  
**Subject:** Re: Time'S UP Inc. v. City, et al., 07-CV-9557

10-25-07

Arthur

Please find attached a pdf version of the Summons, Complaint, Letter requesting personal service on behalf of the individual officers.

Paragraphs 100, 101, 107, 113 were blacked out on the filed complaint, they have been formatted with 'double strike through' on the pdf version.

Earlier today the Summons and Complaint was served on the City and NYPD Commissioner (attached Complaint cover sheet contains service stamps).

Please let me know if you are amenable to accepting service on the individual officers, as per the instructions contained on the SDNY website.

Thank you,

Wylie

## **EXHIBIT B**

**Larkin, Arthur**

**From:** WylieLAW [wylie@wylielaw.com]  
**Sent:** Thursday, January 10, 2008 1:25 PM  
**To:** Larkin, Arthur  
**Subject:** Re: Time's Up v. City, et al.

Arthur

I am not authorized to consent to an extension of time.

If you prefer, you can accept service on behalf of the individual defendants and file a motion on behalf of all defendants.

Wylie

On 1/9/08 12:16 PM, "Larkin, Arthur" <ALarkin@law.nyc.gov> wrote:

Wylie:

Do you intend to serve them? If so, will you consent to an extension of time to file our motion to dismiss, since I would prefer to file one motion on behalf of all of the defendants, once they are served? Please advise.

Arthur G. Larkin, Esq.  
Senior Counsel  
NYC Law Dept.  
100 Church St., Room 3-193  
New York, New York 10007  
(212) 788-1599 (tel.)  
(212) 788-9776 (fax)

**From:** WylieLAW [mailto:wylie@wylielaw.com]  
**Sent:** Wednesday, January 09, 2008 12:16 PM  
**To:** Larkin, Arthur  
**Subject:** Re: Time's Up v. City, et al.

Arthur

The individuals have not yet been served.

Wylie

On 1/8/08 7:40 PM, "Larkin, Arthur" <ALarkin@law.nyc.gov> wrote:

Wylie:

Have the individual defendants been served yet? The ECF docket sheet does not indicate that affidavits of service have been filed. If the individual defendants have been served, would you please fax me copies of the affidavits of service. Thank you.

Arthur G. Larkin  
212-788-1599

(212) 566 8000 www.wylieLaw.com Lawyers for the Rest of Us  
fx 212 202 4952 10 Spring - N Y C 10012

\*  
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\* \*

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\* \*

## **EXHIBIT C**

**Larkin, Arthur**

**From:** Larkin, Arthur  
**Sent:** Tuesday, February 26, 2008 11:05 AM  
**To:** Wylie M. Stecklow Esq. (E-mail)  
**Subject:** Time's Up v. City, et al.

Wylie:

Have the individual defendants been served? If so, can you fax me copies of the affidavits of service? I don't see any affidavits of service on the docket sheet.

Thanks.

Arthur G. Larkin, Esq.  
Senior Counsel  
New York City Law Dept.  
100 Church Street, Room 3-180  
New York, New York 10007  
212-788-1599 (tel.)  
212-788-9776 (fax)

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIME'S UP, INC.

Index no. 07CV9557

Plaintiff,

-Against-

AFFIRMATION OF SERVICE

THE CITY OF NEW YORK,  
COMMISSIONER OF THE NEW  
YORK CITY POLICE DEPARTMENT  
RAY KELLY, OFFICER CAROLYN FANALE,  
OFFICER STEVEN BOBBETT, OFFICER LUIS  
MORTIMER (16934), DEPUTY INSPECTOR  
THOMAS GRAHAM and APPROXIMATELY 34 OTHER  
UNIDENTIFIED NEW YORK CITY POLICE OFFICERS,  
Defendants.

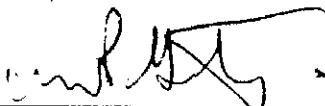
-----X

I, Christian Gutierrez, affirm under penalty of perjury:

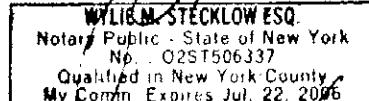
- (1) I am over the age of eighteen years old and not a party to the above-referenced action.
- (2) On February 26, 2008, I served the Summons and Verified Complaint in the instant action, upon Deputy Chief THOMAS GRAHAM of the Disorder Control Unit, of the New York City Police Department, 1278 Sedgwick Avenue, Bronx, NY 10452, by personally hand delivering a true and correct copy of same, to his place of business and into the custody of PO Henneberry (shield 22626) of the disorder control unit, upon information and belief, was the officer in charge, and was suitable for receiving, and agreed to receive, such service of process.
- (3) On or February 26, 2008, I mailed a true and correct copy of the summons and complaint to Deputy Chief Thomas Graham, Disorder Control Unit, 1278 Sedgwick Avenue, Bronx, NY 10452.

Dated: February 26, 2008

New York, NY



CHRISTIAN GUTIERREZ



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIME'S UP, INC.

Index no. 07CV9557

Plaintiff,

-Against-

AFFIRMATION OF SERVICE

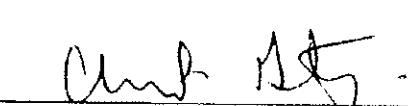
THE CITY OF NEW YORK,  
COMMISSIONER OF THE NEW  
YORK CITY POLICE DEPARTMENT  
RAY KELLY, OFFICER CAROLYN FANALE,  
OFFICER STEVEN BOBBETT, OFFICER LUIS  
MORTIMER (16934), DEPUTY INSPECTOR  
THOMAS GRAHAM and APPROXIMATELY 34 OTHER  
UNIDENTIFIED NEW YORK CITY POLICE OFFICERS,  
Defendants.

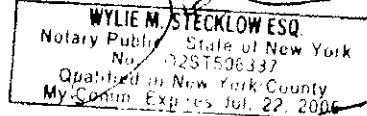
-----X

I, Christian Gutierrez, affirm under penalty of perjury:

- (1) I am over the age of eighteen years old and not a party to the above-referenced action.
- (2) On February 26, 2008, I served the Summons and Verified Complaint in the instant action, upon Defendant Police Officer STEVEN BOBBETT, of the 13<sup>th</sup> precinct of the New York City Police Department, 230 E. 21<sup>st</sup> Street , New York, NY (the "13<sup>th</sup> Precinct") by personally hand delivering a true and correct copy of same, to his place of business and into the custody of PO Herman (Badge # 321037) of the 13<sup>th</sup> Precinct who, upon information and belief, was the officer in charge, and was suitable for receiving, and agreed to receive, such service of process.
- (3) On or February 26, 2008, I mailed a true and correct copy of the summons and complaint to PO STEVEN BOBBETT, NYPD 13<sup>th</sup> Precinct, 230 E. 21<sup>ST</sup> STREET, NY NY 10011.

Dated: February 26, 2008  
New York, NY

  
CHRISTIAN GUTIERREZ



10

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIME'S UP, INC.

Index no. 07CV9557

Plaintiff,

-Against-

AFFIRMATION OF SERVICE

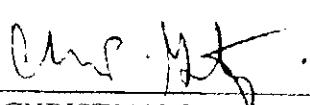
THE CITY OF NEW YORK,  
COMMISSIONER OF THE NEW  
YORK CITY POLICE DEPARTMENT  
RAY KELLY, OFFICER CAROLYN FANALE,  
OFFICER STEVEN BOBBETT, OFFICER LUIS  
MORTIMER (16934), DEPUTY INSPECTOR  
THOMAS GRAHAM and APPROXIMATELY 34 OTHER  
UNIDENTIFIED NEW YORK CITY POLICE OFFICERS,  
Defendants.

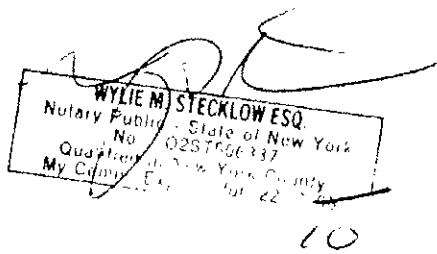
-----X

I, Christian Gutierrez, affirm under penalty of perjury:

- (1) I am over the age of eighteen years old and not a party to the above-referenced action.
- (2) On February 26, 2008, I served the Summons and Verified Complaint in the instant action, upon Defendant Police Officer LUIS MORTIMER of the 5<sup>th</sup> precinct of the New York City Police Department, 19 Elizabeth Street , New York, NY 10013, (the "5<sup>th</sup> Precinct") by personally hand delivering a true and correct copy of same, to her place of business and into the custody of PO Pofu (Badge # 5469) of THE 5<sup>TH</sup> PRECINCT, upon information and belief, was the officer in charge, and was suitable for receiving, and agreed to receive, such service of process.
- (3) On or February 26, 2008, I mailed a true and correct copy of the summons and complaint to LUIS MORTIMER, 5<sup>TH</sup> PRECINCT, NYPD, 19 ELIZABETH STREET, NY NY 10013.

Dated: February 26, 2008  
New York, NY

  
CHRISTIAN GUTIERREZ



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIME'S UP, INC.

Index no. 07CV9557

Plaintiff,

-Against-

AFFIRMATION OF SERVICE

THE CITY OF NEW YORK,  
COMMISSIONER OF THE NEW  
YORK CITY POLICE DEPARTMENT  
RAY KELLY, OFFICER CAROLYN FANALE,  
OFFICER STEVEN BOBBETT, OFFICER LUIS  
MORTIMER (16934), DEPUTY INSPECTOR  
THOMAS GRAHAM and APPROXIMATELY 34 OTHER  
UNIDENTIFIED NEW YORK CITY POLICE OFFICERS,  
Defendants.

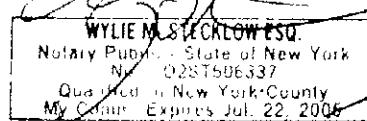
-----X

I, Christian Gutierrez, affirm under penalty of perjury:

- (1) I am over the age of eighteen years old and not a party to the above-referenced action.
- (2) On February 26, 2008, I served the Summons and Verified Complaint in the instant action, upon Defendant Police Officer CAROLYN FANALE, of the CHIEF OF DEPARTMENT'S OFFICE, ROOM 1300, ONE POLICE PLAZA, NY NY 10038 (One Police Plaza) by personally hand delivering a true and correct copy of same, to her place of business and into the custody of Sgt. McEnenaney (badge # 2133) of One Police Plaza who, upon information and belief, was the officer in charge, and was suitable for receiving, and agreed to receive, such service of process.
- (3) On or February 26, 2008, I mailed a true and correct copy of the summons and complaint to CAROLYN FANALE, CHIEF OF DEPARTMENT'S OFFICE, ROOM 1300, ONE POLICE PLAZA, NY NY 10038.

Dated: February 26, 2008  
New York, NY

  
CHRISTIAN GUTIERREZ



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